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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Second Application of	)	
BellSouth Corp. et al.	)	CC Docket No. 98-121
for Provision of In-Region,	)	
InterLATA Services in Louisiana	)	

OPPOSITION OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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August 4, 1998

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SUMMARY

The Commission has been through this process several times before. It is well aware of the incentive that Section 271 is intended to provide to induce Bell Operating Companies ("BOCs") to cooperate in the landmark market-opening initiatives of the Telecommunication Act of 1996 ("Act"). With each deficient application that is submitted, it becomes increasingly important for the Commission to remain steadfast in requiring meaningful, comprehensive satisfaction of all of Section 271's requirements *before* authorizing a BOC to provide in-region interLATA services. Only five months ago, the Commission denied BellSouth's first application to provide in-region services in Louisiana, yet, based on minor modifications to its OSS functionalities and cosmetic changes elsewhere, BellSouth now returns with essentially the same application that was rejected previously. Like the first application for Louisiana, BellSouth's second application should be denied. The standard for Section 271 approval cannot be lowered by attrition or intransigence.

The principal goal of Section 271 is to ensure that competitors have equivalent opportunities to serve customers' local service needs as are available to a BOC to serve customers' interLATA needs. If, as many believe, momentum toward integrated packages of local and long distance services is to continue, new entrants must be able to provide local services to new customers as quickly and easily as a BOC can switch and serve long distance customers. Equivalent opportunities did not exist prior to the Act, and *still do not exist today.* Unless and until a BOC creates those opportunities (by fully implementing the pro-competitive initiatives of the Act), its application must be denied.

In February 1998, the Commission denied BellSouth's first application based upon multiple failures to satisfy Section 271, including, principally, its failure to provide non-discriminatory access to OSS functionalities. Five months later, the OSS changes implemented by BellSouth still do not bring new entrants' access up to parity with BellSouth's own access for comparable functions. Moreover, the performance measures BellSouth has presented to the Commission withhold comparative BellSouth measurements in several critical areas and can mask significant forms of discrimination in favor of BellSouth's services.

Furthermore, separate from the dispositive defects were several failures which were not addressed in the Order and which remain today. Most critically, despite Section 271's intended incentives, BellSouth continues to impede entry through the very method that promises immediate and broad scale local competition – use of BellSouth's ubiquitous local network to create new competing telecommunications services. BellSouth is a leader in the RBOCs' effort to impose unnecessary physical separation of network elements and to limit CLECs to difficult and expensive collocation-based methods of combining network elements. All the while, BellSouth refuses to provide, in addition to collocation, electronic separation and combinations of network elements through the "recent change" functionality of BellSouth's own switches. The "recent change" process is used by BellSouth and other BOCs today to electronically deactivate (and thereby separate) portions of their networks, such as when a customer moves from a particular location. Moreover, the controlled access necessary to allow CLECs to combine network elements through the "recent change" process also is in use today by certain Centrex customers. Because access to the "recent change" process is necessary to comply with both the Act and the Eighth Circuit's opinion, BellSouth is not in compliance with the competitive checklist.

Similarly, BellSouth has not satisfied Section 271(c)(1)(A)'s "actual competition" test. BellSouth is factually incorrect in its claim that there is a facilities-based provider of residential service, and, even if it were correct in what it claimed, BellSouth would still not satisfy the "actual competition" standard because the number of lines it alleges are served on a facilities basis clearly is *de minimis*. In addition, PCS-based service in Louisiana does not satisfy Track A because it is not a substitute for local wireline service to the general population of Louisiana.

Finally, even though BellSouth's application can and should be denied for the above defects, it also is clear that interLATA entry by BellSouth under present conditions is not in the public interest. For all of these reasons, the Commission should not approve BellSouth's application.

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The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following opposition to the second application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region, interLATA services in Louisiana pursuant to Section 271 of the 1996 Act.[1] Only five months ago, the Commission denied BellSouth's first Section 271 application for Louisiana, finding that BellSouth was not providing access to operations support systems ("OSS") on a nondiscriminatory basis and that it did not comply with its resale obligations regarding customer-specific contracts.[2] Despite minor modifications to some OSS functionalities,

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1 CompTel is a national industry association representing competitive providers of telecommunications services. Its over 250 members offer a wide variety of telecommunications services in markets which have been opened to competition. CompTel and its members are committed to the goal of expanding consumer choice in the local exchange and exchange access markets, where competitive alternatives do not exist today.

2 *See Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order, FCC 98-17 (rel. Feb. 4, 1998)("*BellSouth Louisiana Order*"). In relying on these deficiencies, the Commission did not make findings with regard to BellSouth's compliance with the other requirements of Section 271. *Id.* at ¶ 74.

and cosmetic changes to the remainder of its application, BellSouth now resubmits essentially the same application that was rejected previously. This application, like the one before it, should be denied.

I. INTRODUCTION

The Commission has been through this process several times before. It is well aware of the incentive that Section 271 is intended to provide to induce Bell Operating Companies ("BOCs") to cooperate in the landmark market-opening initiatives of the Telecommunication Act of 1996 ("Act").[3] With each deficient application that is submitted, it becomes increasingly important for the Commission to remain steadfast in requiring meaningful, comprehensive satisfaction of all of Section 271's requirements *before* authorizing a BOC to provide in-region interLATA services. The standard for Section 271 approval cannot be lowered by attrition or intransigence.

The principal goal of Section 271 is to ensure that competitors have equivalent opportunities to serve customers' local service needs as are available to a BOC to serve customers' interLATA needs. If, as many believe, momentum toward integrated packages of local and long distance services is to continue, new entrants must be able to provide local services to new customers as quickly and easily as a BOC can switch and serve long distance customers. Equivalent opportunities did not exist prior to the Act, and *still do not exist today*. Unless and until a BOC creates those opportunities (by fully implementing the pro-competitive initiatives of the Act), its application must be denied.

[3] *See, e.g., Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan*, Memorandum Opinion and Order. 12 FCC Rcd 20543, ¶¶ 14, 17-18 (1997)("*Ameritech Michigan Order*").

In February 1998, the Commission denied BellSouth's first application to provide in-region interLATA services in Louisiana.[4] The Commission found several dispositive defects in BellSouth's application, including, principally, its failure to provide non-discriminatory access to OSS functionalities. BellSouth has made some changes to its OSS since then. However, those changes still do not bring new entrants' access to OSS to a level of parity with BellSouth's own access for comparable functions. Moreover, the performance measures BellSouth has presented to the Commission withhold comparative BellSouth measurements in several critical areas and can mask significant forms of discrimination in favor of BellSouth's services.

Furthermore, BellSouth's previous failure to provide nondiscriminatory access to OSS (and to provide resale in accordance with the Act) made it unnecessary for the Commission to address other significant defects in BellSouth's application. Most critically, despite Section 271's intended incentives, BellSouth continues to impede entry through the very method that promises immediate and broad scale local competition – use of BellSouth's ubiquitous local network to create new competing telecommunications services. The two years since the Act's passage have confirmed that cost-based access to the existing network is the fundamental condition necessary for broad-scale entry and competition.[5] Nevertheless, BellSouth is a leader in the RBOCs' effort to impose

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4 Although BellSouth initially appealed the *BellSouth Louisiana Order*, it has since dismissed the appeal. *See BellSouth Corporation, et al. v. FCC*, Stipulation of Dismissal, Case No. 98-1087 (D.C.Cir. July 21, 1998). Accordingly, the Commission's determination that BellSouth did not meet the standards of Section 271 is not in dispute.

5 *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina,* CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 at ¶ 211 (rel. Dec. 24, 1997)("*BellSouth South Carolina Order*").

unnecessary physical separation of network elements and to limit CLECs to difficult and expensive collocation-based methods of combining network elements.

The Act does not permit BellSouth to raise its rivals' costs through such tactics. Section 251 gives new entrants the right to combine network elements in any technically feasible manner, and imposes upon BellSouth a duty to unbundle network elements so as to allow such combinations. BellSouth can satisfy these obligations only if it provides, in addition to collocation, electronic separation and combinations of network elements through the "recent change" functionality of BellSouth's own switches. The "recent change" process is used by BellSouth and other BOCs today to electronically deactivate (and thereby separate) portions of their networks, such as when a customer moves from a particular location. Moreover, the controlled access necessary to allow CLECs to combine network elements through the "recent change" process also is in use today by certain Centrex customers. Because access to the "recent change" process is necessary to comply with both the Act and the Eighth Circuit, BellSouth is not in compliance with the competitive checklist.

Similarly, BellSouth has not satisfied Section 271(c)(1)(A)'s "actual competition" test. Although BellSouth now cites to facilities-based wireline CLECs in Louisiana, only one carrier is even alleged to be serving residential customers through its own facilities – and that claim is factually incorrect. In any event, even if the carrier were serving residential customers as BellSouth alleges (which it is not), BellSouth would still not satisfy the "actual competition" standard because the number of lines claimed to be served is *de minimis*. Accordingly, BellSouth does not face any predominantly facilities-based wireline competitors to its business and residential services. In addition, PCS-based service in Louisiana does not satisfy Track A because it is not a substitute for local wireline service to the general population of Louisiana.

Finally, even though BellSouth's application can and should be denied for the above defects, it also is clear that interLATA entry by BellSouth under present conditions is not in the public interest. For all of these reasons, the Commission should not approve BellSouth's application.

II. BELLSOUTH HAS NOT CORRECTED THE OSS DEFICIENCIES IN ITS FIRST APPLICATION NOR DEMONSTRATED NONDISCRIMINATORY ACCESS TO OTHER OSS FUNCTIONALITIES

The Commission has consistently recognized the critical importance of adequate OSS to the ability of new entrants to compete in the local exchange market. In the *Local Competition Order*, the Commission required ILECs to provide nondiscriminatory access to OSS functions and set a date for compliance (not met by any ILEC) of January 1, 1997.[6] Nondiscriminatory access to OSS requires that ILECs "provide, upon request, nondiscriminatory access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under section 251(c)(3) and resold services under section 251(c)(4)."[7] As the Commission noted in reviewing BellSouth's first application for Louisiana, "[p]roperly functioning operations support systems allow a carrier to receive, process and install customers' orders promptly and accurately."[8] On the other hand, if a competing carrier is denied equivalent access to

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6 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15763 (1996)("*Local Competition Order*").

7 *Id.*

8 *BellSouth Louisiana Order* at ¶ 20.

OSS, the competitor "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.[9]

Every BOC application to date - including BellSouth's previous applications for Louisiana and South Carolina - has been denied based in part upon the BOC's failure to implement OSS in accordance with these requirements. Put simply, well over 18 months after the Commission's implementation date for OSS, each BOC still has failed to provide the kind of operation support systems necessary to support a viable, functioning market for competitive local exchange services. In BellSouth's case, the Commission concluded that the OSS offered to new entrants in Louisiana failed to offer nondiscriminatory access to pre-ordering, ordering, and provisioning functions associated with resale services.[10] Specifically, the Commission found that BellSouth (1) rejected a significant number of orders submitted by competitive carriers through electronic interfaces, resulting in substantial delays in processing new entrants' orders, (2) failed to provide competing carriers with timely status information on their orders, including a failure to promptly notify carriers of the due dates for orders and of situations where the due date would not be met, and (3) did not provide measurements of BellSouth's performance that would enable the Commission to judge whether BellSouth was providing OSS access at parity with its own retail operations.[11]

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9 *Id.* (quoting *Local Competition Order*).

10 *Id.* at ¶21.

11 *Id.* at ¶¶ 23-46. In addition, the Commission found that BellSouth did not provide nondiscriminatory access to pre-ordering functions because, unlike its retail operations, pre-ordering available to CLECs was not integrated with the ordering capability and did not provide equivalent access to due dates for orders. *Id.* at ¶¶ 49-58.

BellSouth's OSS continues to fall far short of the standard necessary to support local competition. First, BellSouth has failed to remedy the deficiencies in its ordering processes that led the Commission to deny its first application for authority in Louisiana. New entrants' orders continue to be rejected at significantly higher rates than equivalent BellSouth retail orders, BellSouth continues to delay providing due dates to new entrants (particularly for unbundled network element orders), and BellSouth does not provide "jeopardy notices" in a nondiscriminatory manner.

Second, the performance measurements offered by BellSouth, like the measurements offered in the initial Louisiana application, fail in many key respects to provide the Commission with a basis for judging the parity of BellSouth's OSS. For many important measurements of BellSouth's performance – including the interval it takes to provide a due date and the intervals associated with due date "jeopardies" – BellSouth refuses to provide an equivalent measurement of its own performance. Thus, the Commission has no basis upon which to determine whether BellSouth is acting in a nondiscriminatory manner in these areas. Further, by providing data only on a state-wide or BellSouth regional basis, BellSouth's measurements can mask substantial discrimination existing within or among areas in Louisiana.

A. BellSouth Has Not Remedied Many of the Deficiencies upon which the Commission Denied BellSouth's Previous Application

Although BellSouth claims it has improved many of its OSS processes, several of the deficiencies identified by the Commission in the *BellSouth Louisiana Order* remain uncorrected.

First, the order rejection rate (and subsequent manual intervention) for CLEC orders continues to be significantly higher than for BellSouth orders. In the *BellSouth Louisiana Order*, the Commission found that significantly fewer orders placed by competing carriers "flowed through" BellSouth's provisioning systems without manual intervention than was the case for BellSouth's own orders. Specifically, the Commission found that approximately 97 percent of residential orders and 81 percent of business orders submitted by BellSouth were processed without manual intervention. By contrast, only 54 percent of CLEC orders were processed entirely on an electronic basis.[12]

Data provided with BellSouth's second application demonstrate that, although the flow-through rate has improved for competitors' orders, the rate remains significantly below BellSouth's performance for its own orders. In the most recent month for which data is provided (May 1998), only 69 percent of all CLEC orders submitted electronically "flowed through" without manual intervention, compared to BellSouth's experience of 96 percent (residential) and 83 percent (business).[13] This disparity on its face demonstrates that BellSouth is not providing nondiscriminatory access to its OSS.[14] Although BellSouth claims that the "adjusted" rate is 82 percent after accounting for "CLEC errors," it does not provide any basis for determining the source of these alleged "errors."[15] In the experience of one CompTel member company, many of the alleged errors are in fact the result of failures in BellSouth's address validation process, USOC

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[12] *BellSouth Louisiana Order* at ¶¶ 24-25.

[13] *See* Stacy Performance Aff., Exhibit WNS-3 at Report: Percent Flow Through Service Requests (Detail). Although BellSouth characterizes this number as "nearly three-quarters" in its application (p. 26), the actual result is only 69 percent.

[14] *BellSouth Louisiana Order* at ¶ 28.

[15] *Cf. BellSouth Louisiana Order* at ¶ 29 (record does not support the claim that the disparity is caused by CLEC errors).

codes that change almost daily, or BellSouth's use of multiple billing codes (or "Q" codes) for each carrier in a state.[16] Moreover, these figures mask the true disparity in BellSouth's OSS, because they do not account for the fact that unbundled network element orders *still* are not processed through electronic means.[17]

Second, there continues to be substantial delays in obtaining due dates for competitors' orders. Although BellSouth claims in its application that it provided a "firm order confirmation" ("FOC") within 24 hours 93 percent of the time for "accurate business resale orders submitted electronically" and 99 percent of the time for "accurate residential orders submitted electronically,"[18] these percentages do not tell the entire story. Non-mechanized orders – including all UNE orders submitted to BellSouth – continue to face substantial delays in obtaining due dates. For example, only 25 percent of all UNE orders received a FOC in less than 24 hours.[19] Indeed, BellSouth reports that the average FOC interval for loop orders in Louisiana was 1.74 days.[20]

DeltaCom, for example, does not always receive the FOC within even 48 hours of submitting the order to BellSouth. It receives a FOC in this time period for only 54 percent of the orders it submits via facsimile. Surprisingly, DeltaCom's experience is *worse* with electronic orders: only 35 percent of these orders receive a FOC within 48 hours.

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16 Affidavit of Christopher J. Rozycki, Director – Regulatory Affairs for ITC^DeltaCom Communications, Inc. ("DeltaCom") at 3, attached hereto as Exhibit 2.

17 *See* Stacy Performance Aff., Exhibit WNS-3 at Report Firm Order Confirmation Timeliness (0% of unbundled loop orders submitted electronically).

18 BellSouth Application at 28.

19 Stacy Performance Aff., Exhibit WNS-3 at Report- Firm Order Confirmation Timeliness. The Exhibit indicates that 33 percent of unbundled loop orders received a FOC in less than 24 hours. *Id.*

20 *Id.*

Third, BellSouth apparently has not corrected the discrimination in its reporting of order "jeopardy" notices. In the *BellSouth Louisiana Order*, the Commission found that although BellSouth provided notice of those order jeopardies caused by the competing carrier (or its customer), it did not do so for delays caused by BellSouth.[21] Because BellSouth failed to provide jeopardy notices for BellSouth-caused delays, the Commission concluded that BellSouth was not providing nondiscriminatory access to OSS functions.[22] Despite this explicit Commission finding, BellSouth's second application does not discuss its provisioning of order jeopardy notices.[23] The importance of jeopardy notices is magnified by the fact that, in the experience of one CompTel member company, BellSouth missed the due date supplied by the FOC in 25 percent of the orders submitted to BellSouth.[24] It appears that BellSouth's policy with regard to order jeopardy notices remains unchanged, and therefore, in violation of the nondiscriminatory access to OSS requirement.

B. BellSouth's Performance Measurements Do Not Enable the Commission to Judge the Parity of BellSouth's OSS Access

The purpose of reporting on BellSouth's performance in providing access to OSS functions is to enable the Commission to determine whether BellSouth is providing such access in a nondiscriminatory manner. The performance measures presented by BellSouth, however, remain insufficient to allow the Commission to make this judgment.

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21 *BellSouth Louisiana Order* at ¶ 39.

22 *Id.*

23 *See* BellSouth Application at 25-29.

24 Rozycki Affidavit at 4.

This inability results from two deficiencies in the type of measurements provided by BellSouth.

First, for a number of important OSS functions, BellSouth withholds reporting on its own performance in equivalent retail analogues. Among the measurements for which BellSouth withholds providing comparative BellSouth data are:

- Percent Rejected Service Requests
- Reject Interval
- FOC Interval
- Average Jeopardy Notice Interval
- Percent Orders Given Jeopardy Notice
- Coordinated Customer Cutover[25]

For each of these functions, an equivalent BellSouth analogue exists. For example, the LCUG guidelines propose retail analogues for reject intervals, FOC intervals, jeopardy notice intervals and percentage of jeopardy notices.[26] Because BellSouth is withholding such comparisons, it is depriving the Commission of the opportunity to evaluate whether BellSouth treats competitors at parity with its own retail functions. Because BellSouth is withholding the basis for any finding of parity, BellSouth has failed to meet its burden of proof to demonstrate compliance with the OSS requirement.

Second, BellSouth does not provide its performance measurements at the proper level of disaggregation. BellSouth offers its performance measurements only for the state of Louisiana and for its entire 9-state region. It does not, however, provide performance measurements on an MSA basis within the state. State-wide performance measurements can mask discrimination in BellSouth's performance. For example, if BellSouth's

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[25] Stacy Performance Aff., Exhibit WNS-1 at 5-6, 14, 18 (describing performance measurements).

[26] Local Competition Users Group, Service Quality Measurements, Version 6.1, at 28-30 (filed in RM-9101, October 8, 1997).

average installation interval in downtown areas is 2 business days, but its state-wide average is 7 days, providing competitors even a 5 day installation interval for customers located in downtown areas is discriminatory. Yet, under BellSouth's current reporting, such discrimination would not be revealed; indeed, BellSouth would report that it is providing "better" service to the competitor than it is providing to itself. Thus, the Commission should order BellSouth (and all future BOC applicants) to provide performance measurements on an MSA basis in addition to any statewide and regional reporting.

III. BELLSOUTH REFUSES TO PROVIDE NONDISCRIMINATORY ACCESS FOR COMBINING UNES

The requirement of cost-based access in order to combine network elements is mandated by the 1996 Act, is essential for widespread local competition, and is a fundamental prerequisite to approval of a BOC's Section 271 application. In the *BellSouth South Carolina Order*, the Commission acknowledged the importance of meaningful, nondiscriminatory access for combining UNEs. The Commission stated: "the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications market."[27] Physical separation and collocation – which is the only potential method for combining UNEs offered by BellSouth – is not sufficient to fully satisfy the Act. "Recent change" is necessary to satisfy the Act's requirement that entrants be able to provide telecommunications services

[27] *BellSouth South Carolina Order* at ¶ 195.

completely through access to the ILEC's unbundled elements.[28] Because BellSouth is not providing this type of access, its application must fail.

Importantly, there should be no further debate concerning an entrant's right to provide service entirely using network elements obtained from the incumbent LEC. The sole issue created by the Eighth Circuit's decision in *Iowa Utilities Board* is not *whether* entrants can use network elements in this manner, but only *how* the elements will be combined.[29] The Eighth Circuit expected that ILECs would provide new entrants with the access they need to combine those elements themselves. On this score, BellSouth's evidence is plainly lacking.

As shown below, BellSouth deliberately refuses to provide the most efficient means to separate and combine network elements – the "recent change" feature of its own network. Through the "recent change" functionality, network elements can be electronically separated (or unbundled) from each other and from the rest of the network. Once so unbundled, CLECs can then access the "recent change" feature to combine those elements in order to provide telecommunications service. Such access is used by the BOCs for their own operations and is required by Section 251(c). Further, access to the "recent change" functionality is technically feasible and administratively efficient. Indeed, BOCs already provide access to recent change to some of their Centrex customers. Therefore, because BellSouth is not providing new entrants with access to this functionality today, it is not providing nondiscriminatory access to unbundled network elements sufficient to enable CLECs to combine those elements.

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[28] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 814 (8^{th} Cir. 1997), *modified on reh'g,* No. 96-3321 (Oct. 14, 1997)("*Iowa Utilities Board*").

[29] *Id.*

A. Access to the "Recent Change" Process is Technically Feasible and Necessary to Fully Comply With the Act

The only identified method to combine the loop and local switch elements that: (a) is nondiscriminatory, (b) can accommodate the millions of requests each year that will occur in a competitive local exchange market, and (c) does not unlawfully impose a facilities-requirement in violation of the Act, is an electronic method which relies on the use of the "recent change" capability of the local switch to separate and recombine the loop and local switch network elements. By modifying existing software which today is used to provide large Centrex customers with access to recent change, this same software-based system can be used by entrants to combine network elements in order to provide a telecommunications service. The specific details of the "recent change" process are described in CompTel's White Paper, "Broadening the Base: Combining Network Elements to Achieve Widespread Local Competition," which is attached as Exhibit 1.

In summary, "recent change" refers to a capability of a LEC's local exchange switch to accept office-specific software changes. The "recent change" functionality is used, among other things, to establish the electronic connections that combine the functionality of a loop with the functionality of the switch, so that a customer can originate or terminate telephone service. The "recent change" software commonly is used by an ILEC when it is installing service to a new customer served by an existing premise.[30] Typically, physical facilities are installed to serve a particular premise, independent of its current occupant. As customers come and go, these physical facilities

[30] The "recent change" software also is used when an existing customer adds or deletes service features (such as call waiting).

are connected and disconnected using the "recent change" software; the physical connections are not disrupted. Rather, the ILEC electronically defines the current occupant's service.[31] On a typical business day, a LEC makes large numbers (hundreds or thousands) of updates through the "recent change" software.

This same process can be used to provision UNEs to a new entrant. The "recent change" process can electronically separate the functionality of the local switch from the functionality of the local loop. In this way, the ILEC's legal right to separate the elements is honored, but the separation occurs in the most efficient manner possible. Then, the same process can be used by the CLEC's provisioning system to combine these elements, restoring service to the consumer with the least cost and minimal disruption.

The principal benefit of the "recent change" approach for network elements is that it can fully automate the combining of the loop and local switching network elements, the process central to widespread local competition. By automating this key process, the "recent change" proposal reduces barriers to serving a broad base of customers and adds integrity and consistency to the process of switching local service customers.

B. The Act Requires a BOC to Provide Access to the Recent Change Software

The 1996 Act imposes a clear and unambiguous requirement on incumbent local exchange carriers to make the existing network available to entrants on a non-

[31] For instance, Bell Atlantic has testified that for customers who wish to terminate service, Bell Atlantic typically issues and provisions a service disconnection order using purely electronic means, and when a new customer moves into a location after a disconnect order has been implemented and orders basic service, no human being has to do anything to complete the provisioning of the service request. See Testimony of Thomas M. Aulisio, Bell Atlantic, Massachusetts Department of Public Utilities, DPU 96-73/74, et. al., December 4, 1997. pp. 28-33.

discriminatory basis, at cost-based rates. Three separate and independent provisions of the Act (and the Commission's rules) require that CLECs access the "recent change" functionality for purposes of combining network elements. First, the recent change functionality is an integral component of access to UNEs pursuant to Section 251(c)(3). Section 251(c)(3) provides:

> Unbundled Access – The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications services.

Pursuant to Section 251(c)(3), entrants must have a right to access network elements individually, as well as a right to combine network elements to provide service. *Both* the method by which network elements are delivered (*i.e.*, the method by which they are separated by the BOC) and the methods available to new entrants for combining elements must satisfy Section 251(c)(3)'s standard.

The Commission stressed the importance of this obligation in the *BellSouth South Carolina Order*. "Because the use of unbundled network elements, as well as the use of combinations of unbundled network elements, is an important entry strategy into the local telecommunications market, we emphasize the importance of ensuring that BOC applicants comply with the requirement that they provide non-discriminatory access to network elements in a manner that allows competing providers to combine such network elements."[32] Accordingly, BellSouth must offer UNEs in such a way that new entrants can combine them to provide telecommunications services.

Moreover, access to the "recent change" functionality is necessary to ensure parity in the BOC's processes implementing Section 251(c)(3). The Commission's rules require that, where transfers can be accomplished through software changes, "[a]n incumbent LEC shall transfer a customer's local service to a competing carrier within a time period no greater than the interval within which the incumbent LEC transfers end users between interexchange carriers."[33]

By denying access to the recent change functionality, the ILEC avoids a software-based transfer, and thus evades the requirement that this transfer be done at parity with a long distance "PIC" change. Of course, because BellSouth's only proposed method of combining UNEs - collocation - requires multiple manual steps to achieve, its proposal would assure that it would always be simpler for a customer to move its long distance service to BellSouth than to change its local service to its current long distance provider.

Second, access to the recent change functionality is required under the Commission's definition of an unbundled local switching network element. Entrants *already* are entitled access to all of the capabilities of the local switch. Section 51.319(c)(1)(I) requires local switching capability for:

> (C) *all features, functions, and capabilities of the switch*, which include, but are not limited to:
>
> (1) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made

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32 *BellSouth South Carolina Order* at ¶ 196.

33 47 C.F.R. § 51.319(c)(1)(ii).

> available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and
>
> (2) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.[34]

Recent change is a functionality resident in the local exchange switch. As such, it is a "feature, function or capability" of the switch that is available to new entrants as part of the local switching UNE.

Third, accessing the recent change capability of the switch is required as part of the operations support systems (OSS) network element. The OSS element consists of "pre-ordering, ordering, provisioning, maintenance and repair, and billing functions *supported by an incumbent LEC's databases and information.*"[35] This duty is not limited to providing access to an interface component, but encompasses "access to all the processes, including those existing legacy systems used by the incumbent LEC to provide access to OSS functions to competing carriers."[36] Importantly, where the BOC accesses functions electronically, the OSS element requires that the BOC provide equivalent electronic access to competitors also.[37]

The "recent change" process is a "database" or is "information" that provides ordering and provisioning functions to the BOCs. As such, it is encompassed within the

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34 47 C.F.R. § 51.319(c)(1)(i)(C) – Local Switching Capability (emphasis added).

35 47 C.F.R. § 51.321(f).

36 *Ameritech Michigan Order* at ¶ 135.

37 *Id.* at ¶ 137.

OSS network element. Indeed, because the "recent change" process accesses these functions electronically, equivalent electronic access to "recent change" must be provided to new entrants.

In the environment which preceded the Eighth Circuit's decision, the FCC had addressed only indirect access to the recent change process – i.e., that the entrant would request the activation/deactivation of features, functions and capabilities of the switch, while the ILEC would process the actual request.[38] After the Eighth Circuit's opinion, however, entrants should be provided a direct mechanism to effect changes in their subscribers' services by directly accessing the network elements they have obtained for the ILEC. If the ILEC does not wish to combine network elements for a new entrant, it must, at a minimum, provide the access to its network so that the new entrant can combine them. "Recent change" accomplishes this result.

C. BellSouth is Impeding Local Competition by Creating Unnecessary Manual Separation and Combination Procedures

In its application, BellSouth makes clear that the only means it will provide to combine network elements is through collocation.[39] This method of access cannot be the only method that a BOC provides for purposes of combining network elements. While physical separation may be desirable to some CLECs, it is by no means the only method possible for delivering UNEs. Indeed, physical separation of UNEs and collocation are much more costly than other methods of combining network elements. Most importantly, collocation-based access to UNEs by definition requires new entrants to deploy their own

[38] *Local Competition Order* at ¶ 415.

[39] BellSouth Application at 39-40.

facilities in order to provide a telecommunications service. Thus, collocation as the sole option does not satisfy the FCC's requirement (upheld by the Eighth Circuit) that entrants may provide service exclusively through UNEs, without any of their own facilities.

The manual collocation proposal offered by BellSouth adversely affects local competition. BellSouth's manual separation/collocation proposal would:

(1) impose unnecessarily prolonged service interruptions for customers when they change to a CLEC as their local service provider;
(2) delay the CLECs ability to enter the market via network element combinations;
(3) degrade the quality of the end user customer's service;
(4) impose wasteful and unnecessary costs on CLECs; and
(5) severely restrict the rate at which CLECs could switch customers over to UNE-based service after the collocation arrangement is established.

Manual combination systems are inherently more costly and less reliable than electronic systems. Manual systems maximize the potential for human error by relying on human intervention for each customer change. This reliance introduces costs that are unnecessary and reduce reliability and quality of service for consumers. Furthermore, manual systems slow entry by introducing time and labor requirements that are inconsistent with widespread entry. Finally, they unnecessarily increase the rates paid by consumers for competing local exchange service.

No manual process to combine the loop/switch network elements will ever satisfy the Act's requirement of nondiscrimination. Under BellSouth's combination proposals, BellSouth alone is able to combine elements and provide service using automated systems – entrants are relegated to the use of manual processes fraught with human intervention and potential error.